No. 242

In the Supreme Court of the United States

OCTOBER TERM, 1952

VERNIE BAILESS, COUNTY TREASURER, CADDO COUNTY, OKLAHOMA, ET AL., PETITIONERS

v.

JUANA PAUKUNE

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OKLAHOMA

MEMORANDUM FOR THE UNITED STATES AMICUS CURIAE

INDEX

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STATEMENT

Certain lands were allotted to Paukune, an Apache Indian, and a trust patent thereto was executed under the General Allotment Act of February 8, 1887, 24 Stat. 388. The allottee died in 1919 leaving a will by which he devised an undivided ⅓ interest in the allotment to his widow Juana Paukune, a non-Indian, and an undivided ⅔ interest to his son. After appropriate proceedings the will was approved by the

Secretary of the Interior. However, the land has never been partitioned and the trust period has been extended. County officials have assessed the undivided interest of Juana Paukuné for *ad valorem* property taxes and threaten to sell it, resulting in the institution of this proceeding to enjoin the assessment and sale.

POSITION OF THE UNITED STATES

In accordance with the views expressed in *Levindale Lead and Zinc Mining Co.* v. *Coleman*, 241 U. S. 432, 437–8, 440; *Mixon* v. *Littleton*, 265 Fed. 603 (C. A. 8), and *Unkle* v. *Wills*, 281 Fed. 29, 35 (C. A. 8),[1] the Department of the Interior has consistently taken the position that the limitations upon conveyances of property allotted to Indians, whether under trust patents or under fee patents with restrictions upon alienation, were not intended to be extended to persons who were not of Indian blood. Consequently, the administrative view has been that, when such lands or interests therein pass by devise or descent to non-Indians, there remains simply a ministerial duty of issuing a fee patent and, hence, that although the United States holds the naked legal title the non-Indian heir or devisee may validly convey his equitable interest, and the fee patent

[1] See also *Taylor* v. *Jones*, 51 F. 2d 892, 893 (C. A. 10); *In re Irwin*, 60 F. 2d 495, 497–8 (C. A. 10); *Johnson* v. *United States*, 64 F. 2d 674, 676 (C. A. 10); *Drummond* v. *United States*, 131 F. 2d 568, 570 (C. A. 10).

when issued would inure to the benefit of the grantee. In the instant case, the will has been approved and the devise of the undivided interest to Juana Paukune confirmed. The taxes here in question have been assessed only upon that interest. It is, therefore, the position of the United States that such taxation is not forbidden by the General Allotment Act. We are in general accord with the main arguments made by the petitioners.

Respectfully submitted.

ROBERT L. STERN,
Acting Solicitor General.

NOVEMBER 1952.

U. S. GOVERNMENT PRINTING OFFICE: 1952